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SUBJECT: FOR NOW: CHAVEZ' POST-REFERENDUM OPTIONS

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Classified By: ACTING POLITICAL COUNSELOR DANIEL LAWTON,  
REASON 1.4 (D)

¶1. (C) Summary. In the wake of his constitutional referendum defeat, President Chavez declared his intention to continue to pursue changes to the constitution, but he has not specified how or when. Amending the constitution is required to make major political changes, such as the elimination of presidential term limits. He already has the authority to move long-pending legislation that would adversely affect state and local governments, university and private school autonomy, civil society, and the Catholic Church. Chavez has some options for using the existing constitution to re-launch some or many of his proposals, including a "people's initiative" or calling for a constitutional assembly. At the same time, he will have to weigh the potential political risks of pursuing changes to the constitution that voters already rejected once. While preparing for state and local elections by October 2008, opposition parties are also expecting -- and bracing -- for another constitutional battle before then.

End Summary.

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For Now  
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¶2. (SBU) In his televised December 3 address to the nation, President Chavez conceded that his proposed changes to the constitution had been defeated -- "for now," the catch-phrase that helped launch his political career after the failed 1992 military coup. In his speech, Chavez stressed that his ideas for constitutional reform remain "alive." In recent days, the government has sponsored billboards around Caracas that simply state "For now." Chavez publicly pledged in a speech to his supporters December 5 to launch a "second offensive" to change the 1999 Constitution, but the Venezuelan president has not specified how or when he intends to do so.

¶3. (SBU) Chavez retains significant authority to enact his political program, including the Enabling Law that permits him to issue decree-laws in twelve vaguely defined areas until August 2008. Senior government officials are already suggesting that either via decree or through the Chavez-dominated National Assembly, the government will pursue a 36-hour work week and the extension of social security benefits to the informal sector, both proposed in Chavez' constitutional package. However, Chavez has less flexibility to make political changes within the existing

1999 Constitution.

**14.** (SBU) Most significantly, Chavez cannot run for re-election in 2012 without changing the two-term limit set by Article 230. According to constitutional experts, the Venezuelan president also cannot legally:

- create new vice-presidencies;
- establish new local entities, such as federal cities;
- make "People's Power" (community councils) an entirely new branch of government;
- politicize the armed forces in the manner Chavez originally proposed; or,
- assume a wide range of additional presidential powers.

Such changes would require specific changes to the existing constitution, according to local constitutional experts.

**15.** (C) Chavez can still move long-pending, controversial legislation through the National Assembly or issue decrees that would:

- create a National Police Force;
- force NGOs to register with the government and allow the government to regulate the flow of international contributions to NGOs;
- restructure the educational system at the expense of private school and university autonomy;
- eliminate the privileged legal position that the Catholic Church enjoys, particularly with respect to state-subsidized religious instruction.

Given the role that the student movement, the Catholic Church, and many local governments played in defeating the constitutional referendum, Chavez would appear to have fresh incentive to press ahead in these areas.

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#### Interpreting the Constitution

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**16.** (C) People's Initiative: The principal obstacle confronting Chavez' desire to revisit his proposed changes is that the 1999 Constitution states that a failed constitutional reform initiative may not be presented again to the National Assembly in the same constitutional period (i.e. a presidential period of six years). Nevertheless, Chavez and other BRV officials have publicly raised the possibility of pursuing a similar reform via a "people's initiative" that could theoretically be launched with a petition signed by at least 15 percent of registered voters (2.4 million voters). A National Electoral Council rector recently suggested that with just minor word changes, Chavez could move ahead with a "people's initiative." The decidedly pro-Chavez constitutional tribunal would likely rule in Chavez' favor against any legal challenges.

**17.** (C) Constitutional Assembly: Chavez could also pursue a Constitutional Assembly at his request, the request of two-thirds of the National Assembly, or the petition of at least 15 percent of the voters. A Constitutional Assembly would require national elections to designate delegates to draft the changes to the 1999 Constitution. Former Defense Minister Baduel has publicly called for a Constitutional Assembly, but opposition parties are generally wary of such a vehicle. Opposition party leaders privately concede that the BRV would be able to elect a super-majority to a Constitutional Assembly and push Chavez' changes through.

**18.** (C) Amendment Process: The Venezuelan President, 30 percent of the National Assembly, or 15 percent of the electorate can propose one or various amendments to the constitution, as long as the amendments do not change the "fundamental structure" of the constitution. Amendment proposals approved by a majority of the National Assembly must still be approved in a public referendum. While there is no limit on amendment proposals, the amendment process is designed for few, individual changes, while a "partial

revision" is supposed to be accomplished via the reform process. Again, the decidedly pro-Chavez constitutional tribunal would like uphold Chavez amendment proposals against legal challenges.

¶9. (SBU) The Reform Process: Some BRV officials are interpreting the existing constitution to allow other branches of government to resubmit even failed constitutional reform proposals. For instance, the National Assembly could propose the elimination of presidential term limits originally proposed by Chavez. Alternatively, the President could resubmit the proposals attributed to the National Assembly in the most recent failed constitutional reform process. The National Assembly would still have to approve any reform proposal by a two-thirds majority over the course of three formal reviews and then submit the final proposal to a public referendum.

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Hard Political Choices  
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¶10. (C) With the help of a pliant judiciary, Chavez should be able to overcome the constitutional obstacles to revisiting some of his proposed changes. He confronts distinctly tougher political choices, however. Trying to put much of his constitutional reform proposal back on the ballot without making significant changes risks a second consecutive defeat at the polls. Opposition voters are likely to vote in greater strength now that the myths of Chavez' electoral invincibility and wholesale National Electoral Council (CNE) fraud have been broken. Opposition parties would likely try to frame such a move as a power grab against the will of the people. Moreover, Chavez still needs to repair his normally formidable electoral machine, and his United Socialist Party of Venezuela (PSUV) remains a work-in-progress.

¶11. (C) While Chavez could reasonably expect to control a Constitutional Assembly, the process of holding Assembly elections and the subsequent Assembly session would likely extend at least several months. Moreover, after boycotting the 2005 parliamentary elections, the opposition has no representation in the National Assembly. Obtaining even a small percentage of Constitutional Assembly seats would give the opposition a new platform. BRV officials have publicly hinted that they are interested in pursuing a stripped down versions of Chavez' failed constitutional reform package, arguing that the package was too "complicated" for most Venezuelan voters. There is no reason to believe, however, that a pared down reform that includes the elimination of

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presidential term limits, a distinctly unpopular idea according to pre-referendum public opinion polls, stands a better chance than the original proposal.

¶12. (C) Chavez also faces political risks should he decide not/not to pursue constitutional changes before the state and local elections to be held by October 2008. Although even opposition politicians believe that Chavez supporters will win the vast majority of gubernatorial and mayoral seats, they believe they can improve on the collective opposition's current hold on two of 23 governorships and 67 of 337 mayoral positions. Podemos, the pro-government party that opposed Chavez' constitutional reform, has two governorships and ten mayoral seats. Opposition parties are already negotiating to field consensus opposition candidates and are anticipating some local splits within Chavismo in some races.

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Comment  
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¶13. (C) Although ill-defined, President Chavez' "For Now" warning has allowed him to retain some political initiative, even in the wake of the constitutional referendum defeat.

The opposition continues to plan for the 2008 state and municipal elections, but also expects Chavez to "reassemble his forces" and wage another battle over the constitution in 2008 before those elections. Local political analysts expect Chavez to shake up his cabinet early in 2008 before announcing how he proposes to revisit his ideas for constitutional changes, much in the same way he rolled out his plans to launch a "socialist revolution" in January 2007.

Chavez will almost certainly try to frame the re-launching of any of his defeated constitutional changes as "the will of the people," including any renewed effort to allow him, the self-described "embodiment of the people," to run again in 2012.

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